
(2004) 04 AP CK 0055
In the Andhra Pradesh High Court
Case No : CMA No. 2063 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Purrai Kishore and Others

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 151, 173

Citation : (2006) ACJ 1881 : (2004) 4 ALD 238 : (2004) 5 ALT 108

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : A.V.K.S. Prasad, SC, for the Appellant; G. Rama Gopal, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—First respondent through his guardian, filed this claim petition seeking a compensation of Rs. 80,000/- from Respondents 2 to 4 and the appellant alleging that when he was proceeding to school, a car bearing No. AHW T 5677, being driven in a rash and negligent manner by its driver, dashed against and caused injuries and consequent permanent disability to him. Appellant who is impleaded as the insurer of the offending car filed a counter inter alia contending that, the claimant has to establish that the offending car was insured with it by the date of accident. In support of his case, first respondent examined three witnesses as P.Ws.1 to 3 and marked Exs.A1 to A3 and XI. On its behalf, appellant examined one witness as R.W.1 and marked Exs.B1 and B2. The Tribunal holding that the evidence of R.W.1 cannot be taken into consideration and so the appellant failed to establish that the offending vehicle was not insured with it by the date of accident, passed an award for Rs. 50,000/- in favour of the first respondent against Respondents 2 to 4 and the appellant. Hence this appeal by the insurer.

2. The main contention of the learned Counsel for the appellant is that since there is no evidence on record to show that the appellant was the insurer of the

vehicle involved in the accident the Tribunal was in error in passing an award against the appellant, on the erroneous assumption that the burden of proof is on the appellant to establish that it is not the insurer of the offending vehicle. There is no representation on behalf of the respondents.

3. It is well known that burden to establish that the offending vehicle was insured with a particular insurance company is on the claimant or the owner of the offending vehicle. As per Section 151 of Motor Vehicles Act, 1988, the owner has the duty to disclose the name of the insurer when called upon to do so. Particulars of the insurance of the offending vehicle are not mentioned in the claim petition. In column No. 17 of the claim petition, which relates to the name and address of the insurer, the name of the appellant is mentioned without any particulars of insurer. The evidence of R.W.1 is that a notice under the original of Ex.B.1 was issued to the owner to furnish the particulars of insurance and that the owner having received the notice under Ex.B2 acknowledgement failed to furnish the particulars. Curiously, the Tribunal found fault with the appellant for not examining the Branch Manager of Bhimavaram Branch and refused to accept the evidence of R.W.1 on the ground that he is not the Branch Manager of Bhimavaram Branch. The Tribunal failed to note that the burden is on the first respondent (claimant) to establish that he made efforts to find out the particulars of insurance of the offending vehicle and that he should either furnish those particulars or call upon the owner to furnish the particulars of insurance of the offending vehicle. Merely because the claimant chooses to implead a particular insurance company as the insurer of the offending vehicle, it cannot be presumed that the offending vehicle was insured with that insurance company. Even if the appellant failed to any adduce evidence in a case like this no award could be passed against the appellant because the evidence adduced on behalf of the claimant does not establish that the offending vehicle was insured with the appellant by the date of accident. So the Tribunal was in error in making the appellant liable for payment of compensation arrived at by it. Only after the first respondent or the 4th respondent is able to establish that the vehicle bearing No. AHW T 5677 was insured with the appellant by the date of accident i.e., 27-6-1993 can the appellant be made liable for payment of the compensation awarded to the claimant.

4. Therefore, the appeal is allowed, the award passed by the Tribunal against the appellant stands suspended till the first respondent or the 4th respondent establishing that the vehicle bearing No. AHW 5677 was insured with the appellant by 27-6-1993. Then only first respondent is entitled to recover the amount covered by the award from the appellant. Parties are directed to bear their own costs in this appeal.